

SENATE BILL No. 332

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1; IC 8-20-1-28.

Synopsis: Vegetation management. Requires electric utilities to follow certain guidelines when performing vegetation management. Requires the utility regulatory commission to include in its annual report to the regulatory flexibility committee the number and status of consumer complaints concerning vegetation management.

Effective: Upon passage; July 1, 2010.

Breaux

January 11, 2010, read first time and referred to Committee on Utilities & Technology.

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Introduced

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 332

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1-2-34.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 34.5. (a) The
3 commission shall establish reasonable rules and regulations to govern
4 the relations between public utilities and any or all classes of their
5 customers. Those rules and regulations shall cover the following
6 subjects:
7 (1) extension of service;
8 (2) extension of credit;
9 (3) deposits, including interest thereon;
10 (4) billing procedures;
11 (5) termination of service;
12 (6) complaints; and
13 (7) information and notice to customers of their rights under the
14 rules.
15 (b) Notwithstanding IC 8-1-2-54, the commission may investigate
16 and enter orders on complaints filed by individual customers arising
17 under this section **or IC 8-1-38**. The commission may establish an

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appeals division to act on its own behalf regarding individual customer complaints. The decision of the division shall be binding on all parties to the complaint. The commission shall review decisions of the appeals division upon timely request by an affected party.

(c) This section does not invalidate any rule or regulation adopted by the commission before July 1, 1979, to govern the relations between public utilities and their consumers if the rule or regulation is consistent with this section.

SECTION 2. IC 8-1-38 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]:

Chapter 38. Electric Utility Vegetation Management Practices

Sec. 1. (a) As used in this chapter, "affected property owner" means the record owner of real property on which a utility plans to perform vegetation management.

(b) The term does not include a property owner that is a governmental unit.

Sec. 2. As used in this chapter, "utility" refers to any of the following:

- (1) A public utility (as defined in IC 8-1-2-1(a)).**
- (2) A municipally owned utility (as defined in IC 8-1-2-1(h)).**
- (3) A corporation organized under IC 8-1-13.**
- (4) A corporation organized under IC 23-17 that:**
 - (A) is an electric cooperative; and**
 - (B) has at least one (1) member that is a corporation organized under IC 8-1-13.**

Sec. 3. As used in this chapter, "vegetation management" means:

- (1) the trimming or pruning of one (1) or more trees; or**
- (2) the cutting down and removal of one (1) or more trees.**

Sec. 4. (a) In performing any vegetation management, a utility shall do the following:

- (1) Follow the American National Standards Institute (ANSI) A300 standards for tree care operations.**
- (2) Enter and remain on property to which the utility possesses an easement or to which there is a public right-of-way.**

(b) The commission may not approve a tariff that grants a utility the right to enter an affected property owner's property other than as permitted in subsection (a).

Sec. 5. (a) Except as provided in section 7 of this chapter, and subject to subsection (d), a utility shall provide direct written

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notice to the following not more than ninety (90) days before and not less than twenty-one (21) days before performing vegetation management:

(1) If the vegetation management will be performed in a municipality, the executive officer of the municipality.

(2) If the vegetation management will be performed in an unincorporated area, the executive officer of the county in which the unincorporated area is located.

(3) Each affected property owner.

(b) Direct written notice provided under subsection (a) must include the following:

(1) For notice provided under subsection (a)(1) or (a)(2), a topographical map or legal description of the area in which the planned vegetation management will be performed.

(2) For notice provided under subsection (a)(3), a statement that copies of the topographical maps or legal descriptions required under subdivision (1) are on file with the executive officer of the county or municipality, as applicable.

(3) A description of the planned vegetation management.

(4) A web site address and a toll free telephone number at which an affected property owner may obtain a written disclosure of all rights, dispute resolution procedures, and other remedies provided by the utility and related to the planned vegetation management.

(5) A statement that an affected property owner may file a complaint about the planned vegetation management activities with the commission.

(6) A toll free telephone number at which an affected property owner may speak directly with a utility representative about the planned vegetation management activities.

(7) Telephone numbers for the commission and the office of utility consumer counselor.

(c) The utility shall publish notice of planned vegetation management as follows:

(1) For vegetation management that will be performed in a municipality, in a newspaper of general circulation published in the municipality.

(2) For vegetation management that will be performed in an unincorporated area, in a newspaper of general circulation published in the county in which the unincorporated area is located.

(d) A utility is not required to provide notice under this section

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1 if:

- 2 (1) the utility has entered into a written agreement with a
 3 county or municipality, as applicable, concerning standards
 4 for vegetation management performed within the county or
 5 municipality, as applicable; and
 6 (2) the written agreement establishes direct written and
 7 published notice requirements to affected property owners
 8 and the appropriate executive officer.

9 Sec. 6. (a) A utility shall employ or contract with:

- 10 (1) licensed contractors or other qualified personnel who are
 11 trained to perform vegetation management consistent with
 12 the American National Standards Institute (ANSI) A300
 13 standards for tree care operations; or
 14 (2) arborists certified by the International Society of
 15 Arboriculture;

16 to perform vegetation management.

17 Sec. 7. (a) For purposes of subsection (b), an emergency includes
 18 the following:

- 19 (1) Fallen trees.
 20 (2) Trees causing power outages.
 21 (3) Trees on fire due to contact with overhead lines.
 22 (4) Other hazards with potential to cause damage to or harm
 23 the public or property.

24 (b) A utility is exempt from the requirements of section 5 of this
 25 chapter if:

- 26 (1) in response to an emergency, the commission acts under
 27 IC 8-1-2-113 to temporarily alter, suspend, or amend any
 28 rules adopted by the commission under this chapter; or
 29 (2) the utility determines that an emergency exists that
 30 requires the utility to undertake immediate action that
 31 includes vegetation management in order to:

- 32 (A) prevent endangerment to life or property; or
 33 (B) ensure the safety, reliability, or power quality of the
 34 utility's electric distribution system;

35 subject to verification by the commission.

36 Sec. 8. (a) An affected property owner or a utility may file a
 37 complaint with the commission to investigate and resolve a dispute
 38 arising under this chapter, including a dispute related to the
 39 utility's entry onto property to which the utility does not possess an
 40 easement to perform vegetation management. The commission
 41 shall conduct a hearing under IC 8-1-2-34.5(b).

42 (b) Upon the request of an affected property owner, the utility

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consumer counselor shall appear on behalf of the affected property owner in a proceeding before the commission under this section or IC 8-1-2-34.5(b).

(c) An affected party may seek review by the commission of a decision issued by the appeals division under IC 8-1-2-34.5(b) for a complaint filed under this section. A decision by the commission under this subsection is final.

(d) The commission may award damages to an affected party if the commission determines that the other party acted in bad faith or otherwise failed to comply with this chapter.

Sec. 9. The commission shall include in its annual report to the regulatory flexibility committee under IC 8-1-2.6-4 the number and status of complaints filed under section 8 of this chapter.

Sec. 10. The commission may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 3. IC 8-20-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 28. Public and municipally owned utilities are authorized to construct, operate, and maintain their poles, facilities, appliances, and fixtures upon, along, under, and across any of the public roads, highways, and waters outside of municipalities, as long as they do not interfere with the ordinary and normal public use of the roadway, as defined in IC 9-13-2-157. However, the utility shall review its plans with the county executive before locating the pole, facility, appliance, or fixture. **Subject to IC 8-1-38**, the utility may trim any tree along the road or highway, but may not cut down and remove the tree without the consent of the abutting property owners, unless the cutting or removal is required by rule or order of the Indiana utility regulatory commission. The utility may not locate a pole where it interferes with the ingress or egress from adjoining land.

SECTION 4. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) The commission may adopt any rules necessary to implement IC 8-1-38, as added by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Any rules adopted under this SECTION must be adopted not later than September 1, 2010. A rule adopted under this SECTION expires on the earlier of:

- (1) the date a final rule is adopted by the commission under IC 4-22-2; or
- (2) January 1, 2012.

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1 **(c) This SECTION expires January 1, 2012.**
2 **SECTION 5. An emergency is declared for this act.**

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